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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,376	04/01/2004	Arnis Pone	0061-011	8258
40972 7590 10/28/2008 HENNEMAN & ASSOCIATES, PLC 714 W. MICHIGAN AVENUE THREE RIVERS, MI 49093				
EXAMINER JACKSON, BRANDON LEE				
ART UNIT		PAPER NUMBER		
3772				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,376

Applicant(s)

PONE ET AL.

Examiner

BRANDON JACKSON

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to amendments/arguments filed 8/4/2008. Currently, claims 1-45 are pending in the instant application.

Response to Arguments

Applicant's arguments filed 8/4/2008 have been fully considered but they are not persuasive. Applicant argues the claim amendments, including a first surface for abutting a first side of a foot and a second surface for abutting a second side of the foot, overcome the current 102(b) and 103(a) rejections. However, these amendments do not overcome the current rejections of record because they do not fully encompass the features and claim language discussed during the interview, dated 7/17/2008. Applicant and Examiner discussed the ankle gapping features of the claimed invention; where the dorsal toe region and the heel region of the user's foot are simultaneously biased away from the lower leg portion of the user's leg. The claim amendments merely disclose biasing a portion of the dorsal side of the foot and a heel portion away from the lower portion, not a particular portion (i.e. toe region) of the dorsal side of the foot. the rejections of record still stand because the element (16) abuts the dorsal side of the foot and element (14) abuts the heel portion of the foot; and both are connected, and therefore simultaneously bias the foot engaging portion away from the leg engaging portion.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-21, 23-29, and 31-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Luttrell et al. (US Patent 5,144,943). Luttrell discloses an ankle device (10) comprising a lower leg engaging apparatus (140), a foot engaging apparatus (12), a biasing member (50) disposed between the lower leg engaging apparatus (140) and the foot engaging apparatus (12) to bias the apparatuses (12, 140) away from one another. The biasing member (50) exerts a continuous force (col. 3, lines 52-54). The biasing member (50) is pneumatic (col. 7, lines 38-40), wherein by the definition of pneumatic the biasing member must contain compressed air and therefore use a pump to insert compressed air into the biasing member (50) in order to set the desired amount of force applied (col. 2, lines 50-52). The cylinder (52), which is tubular, of the biasing member (50) functions as an inflatable tube because it is filled with compressed air. The foot engaging apparatus (12) includes a receiving portion (32), which is a channel (34), adapted to accept the biasing member (50). The receiving portion (32) is substantially rigid. The foot engaging apparatus (12) comprises a first surface (16) adapted to abut a dorsal portion of a foot, and a second surface (14) adapted to abut a heel (col. 3, lines 60-61). The first and second surfaces (14, 16) are arched and abut the dorsal side of the foot and the heel portion of the foot, respectively. The first portion (16) is flexibly coupled to the second portion (14) of the foot engaging apparatus (12).

The first portion (16) is hinged to the lip portion (18) of the second portion (14) of the foot engaging apparatus (12). The first portion (16) has a securing device (col. 3, lines 64-67) for securing the first portion (16) to the second portion (14). The leg engaging apparatus (140) includes a receiving portion (133) adapted to accept the biasing member (50), wherein the receiving portion (133, 135) includes a channel (135) formed in a top portion of the leg engaging apparatus (140). The receiving portion (133, 135) is flared (fig. 1) sufficiently to contain a top portion (137) of the biasing member (50). The leg engaging apparatus (140) is formed of a material sufficiently rigid to transfer force exerted by the biasing member (50) to the lower leg of the user. The leg engaging apparatus (140) is contoured to conform to a human leg. The leg engaging apparatus (140) is sectioned into a left and right section in order to facilitate application and removal. The left and right sections are flexibly coupled (col. 4, lines 5-8) together. The left and right sections are flexibly hinged at a lower leg plate (153). The left and right sections are secured together by a hook and loop fastener (col. 4, lines 5-8). The relative angle between the foot engaging apparatus (12) and the lower leg engaging apparatus (140) remains constant during actuation of the device (10) because of the vertical orientation of the biasing member (50).

With respect to claims 37-41, Luttrell discloses all the structural elements of the claimed invention and the Luttrell device (10) is used for the same function; therefore, the method steps would be inherent to the use of the Luttrell device (10).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5-6 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luttrell et al. (US Patent 5,144,943) in view of applicant's specification. Luttrell substantially discloses the claimed invention; see rejections to claims 1-2 and 4 above, however Luttrell fails to disclose the inflatable tube is shaped as a sectioned torus and adapted to generally surround an ankle and include a break to facilitate positioning around the ankle. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the vertical cylindrical member of Luttrell for the inflatable tube shaped as a sectioned torus and adapted to generally surround an ankle and include a break to facilitate positioning around the ankle, since applicant has not disclosed these limitations provide critical and/or unexpected results and it appears that the invention would perform equally well with any biasing member and actuator such as the pneumatic system taught by Luttrell. Applicant has disclosed the use of hydraulic

biasing means or an inflatable tube as equivalent on page 5, lines 20-26 of applicant's specification.

With respect to claim 22, Luttrell fails to disclose the leg engaging apparatus is tapered from an upper portion to a lower portion; however it would have been an obvious matter of design choice to make the leg engaging apparatus is tapered from an upper portion to a lower portion or whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luttrell et al. (US Patent 5,144,943) in view of Bastow (U.S. Patent 5,215,508). Luttrell substantially discloses the claimed invention; see rejections to claims 1 and 24-25 above. Luttrell fails to disclose the strap (155) on the lower leg engaging apparatus (140) is a semi rigid elastic wrap. However, Bastow teaches an ankle device (fig. 1) comprising a lower leg engaging apparatus (12, 13), foot engaging apparatus (1, 15), and a biasing member (7/9, 6/8). The lower leg engaging apparatus (12, 13) comprises a semi rigid elastic wrap (col. 7, lines 37-38). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Luttrell straps to be a semi rigid elastic wrap, as taught by Bastow, in order for lower leg engaging apparatus to provide support, but also be able to be shaped to the user's leg.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **BRANDON JACKSON** whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772